The Jerusalem District Court **AP 13110-02-12**
Sitting as the Court for Administrative Matters

In the matter of:

1. **_____, Jordanian Passport _____**
2. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**

all represented by counsel, Adv. Noa Diamond (Lic. No. 54665), and/or Benjamin Agsteribbe (Lic. 58088), and/or Sigi Ben Ari (Lic. No. 37566), and/or Elad Cahana (Lic. No. 49009), and/or Ido Bloom (Lic. No. 44538), and/or Hava Matras-Irron (Lic. No. 35174), and/or Daniel Shenhar (Lic. No. 41065), and/or Nimrod Avigal (Lic. No. 51583) and/or Talia Yehuda (Lic. No. 56918)
of HaMoked Center for the Defence of the Individual, founded by Dr. Lotte Salzberger
4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

1. **Minister of Interior**
2. **Head of the Population, Immigration and Border Authority**
3. **Director of the East Jerusalem Population Administration Bureau**
4. **Chair of the Foreigners Appeals Committee**

Represented by the Jerusalem District Attorney
7 Mahal St., Jerusalem
Tel: 02-5419555; Fax: 02-5419581

The Respondent

Administrative Petition

The Honorable Court is hereby requested to instruct the Respondents to appear and show cause:

1. Why the Respondents should not retract their decision not to grant Petitioner 1 temporary status in Israel for the duration of the processing of her status application by the Respondent's Inter-Ministerial Committee.

2. Why the Respondents should not establish, in protocol, that foreign women who seek status in Israel due to their being a victim of abuse at the hands of their Israeli spouse and whose application has met the preliminary requirements for referral to the Inter-Ministerial Committee, shall receive temporary status in Israel for the duration of the processing of their application by the Inter-Ministerial Committee, notwithstanding the fact that they may have not had an Israeli visa prior to submission of the application.

Introduction

3. This petition concerns a most disturbing and humanitarian case. It is the case of a woman whose husband refused to make the necessary arrangements to secure her status for many years, as part of his desire to control her, limit her freedom and trap her in his home. It is the case of a mother of three young children, born in Israel, permanent residents of Israel, the children of a permanent resident of Israel, who have also suffered abuse at the hands of their father.

4. The woman in question has extraordinary courage. She managed to extricate herself from the cycle of violence in which she was trapped and filed a complaint against her abusive husband. Thanks to her complaint and testimony, the violent husband was indicted, tried and sentenced to five months in prison. This brave woman, who defied violence and said "no more" is now asking the Israeli authorities to help her and her children recover and lead a peaceful, quiet life, free of fear.

5. The woman contacted the Inter-Ministerial Committee for Humanitarian Affairs (hereinafter: the **Inter-Ministerial Committee**), requesting her status in Israel be arranged as a victim of domestic violence. The woman requested that for the duration of processing by the Committee, her status be arranged on a temporary basis, in order to secure some measure of certainty and stability for her and her family and to allow her to work and provide for the family. This request was based on the same rationale according to which the Ministry of Interior extends the visas of individuals who apply to the Inter-Ministerial Committee pending completion of the case, which, as is known, may take some time.

6. The Ministry of Interior has acknowledged the prima facie substance of the woman's humanitarian claims and referred her application to the Inter-Ministerial Committee. However, in the context of an appeal filed by the woman, the Ministry refused to grant her temporary status for the time her application was being processed. The main reason for the refusal was that the woman had been "illegally" present in the country and that she had not been examined under the graduated family unification procedure. In other words, the woman must continue to pay the price for her abusive husband's actions, as his refusal to have her status in Israel arranged at the Ministry of Interior is the very reason why she was present in the country "illegally".

7. In this petition, we shall argue that it is inappropriate, to understate, to demand a victim of violence to meet conditions over which she had no control. Israel has established mechanisms for protecting immigrant women who are victims of abuse, partly through a Ministry of Interior protocol. In the framework of this protection mechanism, the state must arrange for the status of the most harmed, most vulnerable women – those whose husbands had turned into illegal aliens against their will.

The Parties

8. **Petitioner 1** (hereinafter: the **Petitioner**) is a Jordanian citizen, born in 1983. In 2000, she married a permanent resident of Israel, **_____** (hereinafter: **_____** or **Mr. _____**). Shortly after

the marriage, the Petitioner entered the country under her husband's sponsorship. During her marriage, the Petitioner was a victim of abuse and violence by her husband. As part of his violent treatment of her, the husband refused to file an application with the Ministry of Interior to have the Petitioner's status in Israel arranged as his spouse. The Petitioner and the husband had three children, ages 9, 8 and 6.

9. **Petitioner 2** is a registered non-profit organization whose goal is to assist individuals who have been victims of abuse or discrimination by state authorities, including defending their rights in the courts, whether as a public petitioner or representing individuals whose rights have been violated.

10. **Respondent 1** is the minister in charge under the Entry into Israel Law 5712-1952 of all matters relating to this Law. This includes applications for family unification and applications for arranging the status of children, filed by permanent residents of the country living in East Jerusalem.

11. **Respondent 2** is the director of the Israeli population registry. Under the Entry into Israel Regulations 5734-1974, Respondent 1 delegated to Respondents 2 and 3 some of his powers with respect to processing and approving applications for family unification and applications for arranging the status of children, filed by permanent residents of the country living in East Jerusalem. Additionally, Respondent 2 takes part in developing policies related to applications for status in Israel made under the Entry into Israel Law and the Regulations issued pursuant thereto.

12. **Respondent 3** is the director of the regional population administration bureau in East Jerusalem. Under the Entry into Israel Regulations, Respondent 1 delegated to Respondents 2 and 3 some of his powers with respect to processing and approving applications for family unification and applications for arranging the status of children, filed by permanent residents of the country living in East Jerusalem.

13. **Respondent 4** (hereinafter also: **the Commissioner** or the **Committee Chair**) has been authorized by Respondent 1 to review and make decisions in appeals against the decisions of the population administration, with the exception of decisions made by Respondent 1 on applications for visas and residency visas under the Entry into Israel Law 5712-1952, according to the guidelines detailed in Population Administration Protocol 1.5.0001 ("Foreigners Appeals Committee Protocol").

14. For the sake of convenience, Respondents 1-4 will be hereinafter referred to as: **the Respondent**.

The Petitioner's Matter

15. The Petitioner married **Mr. _____**, a permanent resident of Israel, on October 18, 2000, in Jordan. The couple's wedding party was held in 2001, in Jerusalem. The Israeli marriage contract verification was held on November 30, 2008. The couple moved into an apartment in a building owned by the husband's family in Sur Bahir after their wedding.

    The couple's Jordanian marriage contract is attached hereto and marked **P/1**.

    The couple's Israeli marriage contract verification is attached hereto and marked **P/2**.

16. Over the years, the couple had three children, _____, born in 2002; _____, born in 2003 and _____, born in 2006. The children are registered as permanent residents in Israel.

17. During the years she lived in Jerusalem, the Petitioner suffered severe violence at the hands of her husband and her father-in-law, _____ (hereinafter: **the father-in-law**). The husband also used violence against the children, particularly _____.

18. The Petitioner recounts that her husband was violent toward her for many years and that the violence worsened over the years. It climaxed in an incident that occurred on October 2010, when her husband beat her, broke her hand and left her nearly unconscious on the floor, unable to move.

19. The husband's violent behavior extended to breaking items in the home and shouting. The Petitioner describes how he would break furniture and telephones and shout at her and the children.

20. The abuse was not just physical, but also psychological. **Mr. _____** used the fact that the Petitioner had no status in the country to terrorize her. When the Petitioner threatened to turn to the police, **Mr. _____** answered that she had no status and so she could not complain to the police. He also said that because she had no status, he would be able to keep the children and she would not be able to see them. The issue of status became a tool at the hands of the husband, who refused to have the Petitioner's status arranged via family unification. The practical implication of this refusal was that the home became the Petitioner's prison. She was afraid to step outside lest she be arrested and deported.

21. The husband also used their young daughter, **_____,** against the Petitioner, hurting the child in the process. _____ suffers from anemia and requires blood transfusions twice weekly. Her disease can be cured with a bone marrow transplant. Until recently, the husband had refused to arrange the child's status with the Ministry of Interior, citing her disease as the reason for the refusal. He blamed the Petitioner for the disease and said he would not register the child as punishment. Thus, _____ had no status anywhere in the world and no secure and proper health insurance for the first five years of her life. The father has only recently agreed to register the child.

    Confirmation of the child's disease from Dr. Acker of the Pediatric Hematology and Oncology Department at Hadassah Hospital is attached hereto and marked **P/3**.

22. In addition to violence against the Petitioner, **Mr. _____** also used violence against his children. He used to beat _____ even when he was very young. Any minor incident could be cause for a beating: noise, crying, complaints, a fight between the children. The husband used to beat _____ severely, often using a hose which left scars and bruises. Sometimes the violence was so terrible that the neighbors could hear and would come to help the child.

23. In October 2010, the violence peaked. First, the Petitioner's father-in-law beat her severely. Then, the husband also beat her and broke her hand. He also beat his daughter _____, who was sitting in front of the computer. He pushed her off the chair and broke the computer, telling the Petitioner to leave the house and never return.

24. That night, the Petitioner went to the Moria police station in the Talpiot neighborhood of Jerusalem and filed a complaint against her husband.

    Confirmation of the police complaint is attached hereto and marked **P/4**. The confirmation describes a complaint regarding violence, assault causing bodily harm, intentional property damage, assault by a guardian against a helpless person and causing bodily harm and assault causing bodily harm – spouse.

25. The day after she filed the complaint, with the assistance of the police and the Silwan welfare office, the Petitioner and her children were taken to an abused women's shelter. The daughter, **_____,** remained in the shelter for a week only, as she required medical attention due to her disease. The Petitioner, _____ and _____ remained in the shelter for a month and a half, until the end of November 2010.

26. In the interim, the husband was arrested and jailed. On January 27, 2011, he was sentenced to five months in prison for the violent offenses he committed against the Petitioner.

    The verdict in the criminal case against the husband, CrimC 38906-10-10 is attached hereto and marked **P/5**.

27. The husband was released from prison in early March 2011.

28. Since she left the shelter, the Petitioner has been living in an apartment she rented in Sur Bahir, with financial assistance from her family in Jordan.

29. Shortly after she left the shelter, the Petitioner contacted Petitioner 2 for assistance in arranging her status in Israel.

30. The Petitioner also turned to the legal aid office at the Ministry of Justice (hereinafter: **the legal aid office**) and asked for assistance in her claim for custody, additional guardianship and spousal and child alimony. The legal aid office appointed an advocate for the Petitioner. The Petitioner has been recognized as unable to pay fees by the Shar'ia court.

    The letter of appointment from the legal aid office is attached hereto and marked **P/6**.

    A certificate serving as proof of inability to pay fees is attached hereto and marked **P/7.**

The application to the Inter-Ministerial Committee

31. On March 10, 2011, the Petitioner contacted the East Jerusalem Population Administration Bureau (hereinafter: the Bureau) via HaMoked, requesting that the Inter-Ministerial Committee arrange her and daughter, _____'s status. The child did not have status at the time (hereinafter: **the humanitarian application**).

    The humanitarian applications with enclosures is attached hereto and marked **P/8**.

32. The application details the Petitioner's and her children's ordeal and contains a detailed theoretical and legal background on the need for arranging the status of battered immigrant women. The application indicates that the Petitioner meets the substantive conditions of the Respondent's Protocol 5.2.0017A, "Protocol for Cessation of the Graduate Procedure for Status for Spouses of Israelis as a Result of Violence by the Israeli Spouse". Therefore, the humanitarian application concluded with a request to grant the Petitioner status in Israel.

33. On March 28, 2011, a letter sent by the Respondent's East Jerusalem Bureau dated March 22, 2011, was received. The letter stated that in order to admit the application for processing, the Petitioner must pay the fee specified in the fee schedule. The letter enclosed the original humanitarian application filed with the Bureau on March 10, 2011.

    The Bureau's letter dated March 22, 2011 is attached hereto and marked **P/9**.

34. On the same day, the Bureau was sent an application for a service fee exemption due to the Petitioner's financial inability to pay the required fee. The application stated that the Petitioner was unable to work because she did not have a valid visa, no income and no pensions.

    The application for a fee exemption is attached hereto and marked **P/10**.

35. On April 14, 2011, a reminder for the fee exemption application was sent.

    The reminder is attached hereto and marked **P/11**.

36. On April 28, 2011, an additional reminder was sent. The reminder noted that the Bureau's position, as transmitted to HaMoked, was that the Petitioner's status application would not be considered until a decision was made on the fee exemption application.

The reminder is attached hereto and marked **P/12**.

37. On May 12, 2011, an additional reminder was sent.

The reminder is attached hereto and marked **P/13**.

38. In view of the protracted processing of the Petitioner's fee exemption application and the fact that she remained with no status whatsoever, the Petitioner's fear of arrest and deportation grew stronger. Therefore, on May 19, 2011, the undersigned contacted the Bureau's director, Respondent 3, asking for written clarification that no enforcement measures would be taken against the Petitioner pending a decision on her application for a fee exemption, as stipulated in Protocol 5.1.0001 (hereinafter: **the clarification request**). The letter noted that the woman in question was a victim of domestic violence and that she must be able to turn to the police quickly and easily, if need be, without fear of being deported and torn away from her young children.

The clarification request dated May 19, 2011 is attached hereto and marked **P/14**.

39. This letter received no response whatsoever.

40. An additional reminder for the fee exemption application and the clarification request was sent on May 26, 2011.

The reminder is attached hereto and marked **P/15**.

41. An additional reminder was sent on June 13, 2011.

The reminder is attached hereto and marked **P/16**.

42. In view of the protracted processing of the Petitioner's fee exemption application and the urgent humanitarian nature of the Petitioner's application, Petitioner 2 made efforts to raise the amount required for the Petitioner's fee payment. On July 4, 2011, HaMoked paid the fee, without relinquishing the argument that the Petitioner was entitled to an exemption.

A letter submitted on the date of fee payment is attached hereto and marked **P/17**.

43. Thus, on July 4, 2011, upon payment of the fee, the Petitioner's humanitarian application was returned for Bureau processing.

The Application for Temporary Status

44. In addition to the fee payment, an application for temporary status for the duration of processing of the application for residency by the Inter-Ministerial Committee was filed with the Bureau (hereinafter: **the temporary status application**). In this application, the Bureau was requested to arrange for the Petitioner's status temporarily and grant her an A/5 visa while the humanitarian application was being processed. A request was also made to grant the daughter _____, who at that time was unregistered, permanent status immediately, or, an A/5 status pending completion of the examinations required for granting permanent status.

The temporary status application is attached hereto and marked **P/18**.

45. The temporary status application included the argument that, as described and specified in the humanitarian application, the Petitioner meets the conditions set out in the protocol which regulates the status of foreign women who had fallen victim to violence by their spouses.

46. According to the Protocol, population administration staff shall extend the foreign national's visa in case of a decision to halt the graduated procedure. Additionally, Protocol 5.2.0022 (updated September 15, 2010), which regulates the operation of the Inter-Ministerial Committee, stipulates that the staff receiving the application shall extend the visa held by the applicant.

47. This practice of granting residency visas to individuals who apply to the Inter-Ministerial Committee pending a decision in their case has been affirmed in decisions made by the Court:

    A. The Ministry of Interior followed this practice in the matter of the petitioner in AP 8634/08 (Jerusalem) **Larisa Shem Tov v. Minister of Interior**, where the visa held by the petitioner, a victim of spousal abuse, was extended for the duration of the Inter-Ministerial Committee's processing of her case (see, §2 of the judgment, published in Nevo).

    B. The Respondent also followed this practice in HCJ 3659/06 **Rudike Schertzer v. Ministry of Interior**, where the residency visa granted to the widow of an Israeli citizen was extended pending the Inter-Ministerial Committee's examination of her matter, despite the fact that the authenticity of the marriage was questioned throughout the process (these doubts were reinforced by the petitioner's husband's requests to halt the family unification process). In the Schertzer case, the couple did not have children.

    C. In HCJ 2280/06 **Evelyn Gotthurt v. Ministry of Interior**, a woman whose husband died was granted an extension for her residency visa pending the Committee's decision in her matter.

    D. In AAA 8569/02 **Garim Bourana**, the court instructed the Ministry of Interior to grant the appellants a B/1 visa which allows its holder to work. Upon establishment of the Inter-Ministerial Committee and the referral of cases for processing thereto, the Court instructed that the appellants' visas be extended and remain valid for the duration of the Committee's work on the case.

    The decisions of the courts dated July 24, 2003 and July 14, 2004 are attached hereto and marked **P/19 1-2**.

    E. In AP 10889-10-10 **Khadijet v. Ministry of Interior**, Justice Marzel instructed that the petitioner's visa would remain valid pending the decision of the Inter-Ministerial Committee. In the same matter, the respondents agreed that the petitioner would not be required to pay a fee for the periodic extensions of her visa (see judgment dated February 1, 2011, published in Nevo).

48. **The temporary status application included the argument that the rationale for extending the residency visa granted to a battered wife who turns to the Inter-Ministerial Committee to have her status arranged is clear and evident.** The purpose of the Protocol is to sever the battered woman's destructive dependency on her abusive husband and allow her to arrange for her status independently. By including a provision to extend the woman's residency visa, the Protocol encourages abused wives to complain without fear of losing their status as a result.

49. **This rationale is particularly relevant to cases in which the battered wife's status was never arranged.** Such women are even more vulnerable to enforcement and deportation and are more wary of contacting the authorities about the violence. One must recall that the Petitioner's status was never arranged as a direct result of her husband's violence against her and that she meets the

substantive conditions of the Protocol. Therefore, it was claimed, she must be granted the visa to which she would have been entitled had she participated in the graduated procedure and this visa must be extended pending the Committee's decision.

50. It was argued that granting women victims of violence temporary status also helps these victims recover and receive the medical services they require. Studies have shown that women victims have a much higher rate of medical conditions than other women. Researchers point to a 50% to 70% increase in medical conditions among women victims of violence, particularly among women who have been victims of physical and sexual abuse.

    See e.g.:

    Intimate Partner Violence and Physical Health Consequences Jacquelyn Campbell, PhD, RN; Alison Snow Jones, PhD; Jacqueline Dienemann, PhD, RN; Joan Kub, PhD, RN; Janet Schollenberger, MHS; Patricia O'Campo, PhD; Andrea Carlson Gielen, PhD; Clifford Wynne, MD, *Archives of Internal Medicine*, 162(10), 2002 1157-1163.

51. The temporary status application included the argument that the Petitioner needs a stable status while she waits for completion of proceedings before the Inter-Ministerial Committee, which, as is known, may take quite some time. She needs some certainty in her life in order to begin her recovery and start living her life in dignity. **In her current situation, the Petitioner is unable to work and therefore cannot provide for her children. Granting the Petitioner status immediately and pending the Committee's decision is crucial not only for her, but also for her children.**

52. In light of the aforesaid, the Bureau was asked to grant the Petitioner temporary residency which is to be extended pending the decision of the Inter-Ministerial Committee in her matter.

53. The letter concluded with the obvious comment: **had the Petitioner's husband arranged for her status as the law permits, she would have had permanent residency by now.**

54. On the date on which the fee was paid and the application for temporary status was made, July 4, 2011, the Petitioner was given a letter containing a list of missing documents required for processing the application.

    The letter demanding the documents is attached hereto and marked **P/20**.

55. On July 24, 2011, the requisite documents were sent.

    The covering letter for the requisite documents sent to the Bureau is attached hereto and marked **P/21**.

56. On August 8, 2011, a reminder was sent, in which the request to grant the Petitioner and her daughter status while the humanitarian application was being processed was repeated.

    The reminder is attached hereto and marked **P/22**.

57. On August 25, 2011, an additional reminder was sent.

    The reminder is attached hereto and marked **P/23**.

58. On September 8, 2011, an additional reminder was sent.

    The reminder is attached hereto and marked **P/24**.

59. On September 25, 2011, an additional reminder was sent.

The reminder is attached hereto and marked **P/25**.

60. On October 10, 2011, an additional reminder was sent.

The reminder is attached hereto and marked **P/26**.

61. On October 10, 2011, more than two months after the temporary status application was filed and in the absence of any response to the Petitioner's urgent request, an appeal was filed with the Foreigners Appeals Committee.

The appeal, without enclosures, is attached hereto and marked **P/27**.

The Foreigners Appeal Committee Proceedings

62. On October 24, 2011, we received the decision of Respondent 4 dated October 23, 2011, according to which the response of counsel for the Respondent in the appeal would be delivered within 30 days.

The decision of Respondent 4 of October 23, 2011 is attached hereto and marked **P/28**.

63. On November 6, 2011, the Respondent's notice and a request for deletion of the appeal were received. In the request, the Respondent pledged not to remove the Petitioner (the Appellant there) pending the decision of the Inter-Ministerial Committee on her matter. The decision of Respondent 4, whereby the response of the Appellants would be filed within 14 days was handwritten on the notice.

The notice of the Respondent with respect to the appeal, with the handwritten decision of Respondent 4 are attached hereto and marked **P/29**.

64. On November 13, 2011, the Petitioner-Appellant's response was submitted to the Appeals Committee. In the response, counsel for the Petitioner repeated the rationale for the temporary status application and stressed that the Respondent's protocol granting status to battered immigrant women who wish to leave their abusive husbands concurrently with arranging their status in the country is based on the recognition of **the state's obligation to do everything in its power to eradicate and repudiate violence.** Therefore, the authorities have an obligation toward these women. They must help them when they exit the abusive relationship. Particularly, as part of the Respondent's obligation toward the Petitioner-Appellant, it must help her **even as her humanitarian application is being processed**, which may take quite some time. **The assistance the Respondent can extend to the Petitioner-Appellant is granting her temporary status**.

65. With respect to the Respondent's undertaking not to deport the Petitioner-Appellant pending the decision of the Inter-Ministerial Committee on her matter, the undersigned emphasized that this was not an individual gesture, but rather an obligation enshrined in the Respondent's Protocol 5.1.0001 "Admittance of Applications and Submission of Appeals" which stipulates "No enforcement measures shall be taken against applicants pending the decision on an application/appeal/objection".

The response of the Petitioner-Appellant dated November 13, 2011 is attached hereto and marked **P/30**.

66. On November 14, 2011, the decision of Respondent 4 of that same day was received. According to this decision, the response of the Respondent would be submitted within 14 days and, "The

response shall also address the position of the Respondent and/or case law with respect to the application of the aforesaid protocol to residents and whether it is applicable to a person who had not been under the graduated procedure prior to submitting the application to the humanitarian committee and to a person who did not have a visa for the country".

The decision of Respondent 4 dated November 14, 2011 is attached hereto and marked **P/31**.

67. On November 15, 2011, the Petitioner was summoned to a hearing at the Respondent's office on November 21, 2011.

The hearing summons is attached hereto and marked **P/32**.

68. On November 21, 2011, the Petitioner's hearing was held. At the hearing, the Petitioner gave her account of her life, including her former husband's violence toward her. The Petitioner also noted that she had not visited Jordan since she moved to Israel ten years earlier as "He [the husband, N.D.], did not let me leave the house and go". In response to a question posed by Ms. Melamed, who conducted the hearing, the Petitioner stated that she repeatedly told her husband to file a family unification application for her over the years, but he refused to do so. At the conclusion of the hearing, the undersigned noted that an application for temporary status for the duration of the Committee's work on the case had been filed on behalf of the Petitioner as she has great difficulty moving and making a living without status.

Transcripts of the hearing dated November 21, 2011 are attached hereto and marked **P/33**.

69. On November 29, 2011, our office received a document entitled "Updating Notice on behalf of the Respondent and Application for Deletion of Appeal" dated the same day. According to the notice, since the Petitioner-Appellant did not have an Israeli visa at the time of filing the application to the Inter-Ministerial Committee, Section E4 of the Respondent's Protocol 5.2.0022, which instructs the Respondent to extend the visa of an individual who applies to the Inter-Ministerial Committee, does not apply to the Petitioner-Appellant. The document contained a handwritten notice by Respondent 4 instructing the Appellant to submit her response within 14 days.

The Updating Notice on behalf of the Respondent, containing the handwritten instruction of Respondent 4 is attached hereto and marked **P/34**.

70. On December 4, 2011, the response of the Petitioner-Appellant was filed. The response presented the position that the Respondent was focusing on a formal argument, according to which the only issue in need of examination in the case of the Petitioner-Appellant is whether she had had an Israeli visa. The Respondent was ignoring the substantive arguments made in the temporary status application and in the appeal. It was also argued that the Respondent was ignoring his duty to use discretion in special humanitarian cases and to grant an Israeli visa based on his broad discretion where the appropriate humanitarian conditions have been met. The Petitioner-Appellant's argument with respect to the Respondent's obligation to take humanitarian issues into consideration as part of the overall considerations weighed in the process of deciding on granting an Israeli visa was supported by citations from case law.

The response of the Petitioner-Appellant dated December 4, 2011 is attached hereto and marked **P/35**.

71. On January 9, 2012, the decision of Respondent 4 in the appeal, made the same day, was received. In her decision, Respondent 4 rejected the appeal. The main argument for the rejection was: "None of the tests the Respondent must apply in the context of the graduated procedure were applied or

proven with respect to the Appellant, including the question of where her center-of-life had been throughout those years".

The decision of Respondent 4, dated January 9, 2012, is attached hereto and marked **P/36**.

The Legal Argument

72. We shall herein argue that the Petitioner's case is clearly humanitarian and that the Respondent must give considerable weight to this fact when using his broad discretion to decide on her application for temporary status. The Petitioners will also argue that the decision of Respondent 4 is inappropriate as it is based on the Petitioner's presence in Israel without a visa, a matter over which the Petitioner had no control. We will also argue that the position of Respondent 4 does not rely on case law appropriately and that the case law cited therein is presented in a selective and leading manner. Finally, the Petitioners will address the general remedy sought in this petition.

We turn to the matter in order.

The Respondent acknowledged the Petitioner's cause

73. It is noted at the outset that the Respondent has already indicate that the Petitioner has cause for a humanitarian application. This has been indicated through the Respondent's conduct and his Protocol 5.2.0022 which regulates the operation of the Inter-Ministerial Committee. We shall explain.

74. According to Protocol 5.2.0022 an application must go through several stages before it is reviewed by the Inter-Ministerial Committee. Section E3 of the Protocol specifies the stage that is relevant to the matter at hand:

> The case shall be referred for review by a Bureau committee headed by the director of the Bureau, who will transmit his recommendation to the visa desk at the Authority's headquarters for a decision whether to refer the applicant's matter for review by the Committee. Inasmuch as the desk decides to refer the case for review by the Committee, the case shall be returned to the Bureau and the applicant shall be summoned for an interview in order to present the circumstances and grounds for his application. The interview shall take place according to "Interview Protocol" No. 5.1.0013.

75. To complete the picture, we note that according to the Protocol, if the processing desk clerk finds that the application does not raise *prima facie* humanitarian grounds, he has the authority to reject it out of hand:

> The application will be reviewed by the processing desk at the Authority headquarters within 14 days of receipt of the file from the Bureau. The head of the processing desk will examine whether the application does not raise *prima facie* humanitarian grounds and as such must be rejected out of hand or whether there is cause to refer the application for review by the Committee.

Protocol 5.2.0022 of the Respondent is attached hereto and marked **P/37**.

76. As described above, the Petitioner's humanitarian application was returned for processing on July 4, 2011. On November 21, 2011, a hearing was held in her matter. As emerges from the Respondent's Protocol, this means that **the desk made the decision to refer the case for review**

by the Inter-Ministerial Committee and therefore, the Petitioner was granted a hearing. In other words, the Respondent found that the Petitioners' application raised *prima facie* **humanitarian grounds**.

77. This issue has significant implications which we shall address below. At this point, we shall state that following the decision to refer the Petitioners' matter to the Inter-Ministerial Committee, and particularly following the hearing in her matter, the Respondent was entirely familiar with her circumstances and she was not a woman who had suddenly appeared demanding an Israeli visa. In view of the fact that the Respondent considered the Petitioner's case to be genuinely humanitarian, and specifically that she had been a victim of violence, the Respondent had an obligation to give these facts consideration when deciding on the Petitioners' application for temporary status.

The Petitioner

Battered women – general background

78. As described in the factual chapter, the Petitioner had fallen victim to severe violence on the part of her spouse and father-in-law. The temporary status application and the appeal provided details on this matter in support of the Petitioner's claim that her difficult circumstances constitute humanitarian grounds for grating temporary status while the Inter-Ministerial Committee reviews her case. We shall hereinafter provide background on women victims of violence in general and battered immigrant women in particular. This background supports the Petitioner's humanitarian claim.

79. The phenomenon of Intimate Partner Violence, or IPV, is a well known and age old social phenomenon, but it is only in recent decades that it has been researched extensively. Contrary to common belief, domestic violence against women is not a means for resolving conflict, but rather **a means for gaining control**. By using different types of violence, male abusers attempt to control various aspects of their female counterparts' lives, subjugate them and restrict their freedom.

80. **Over the past decade, the term "violence" has been expanded beyond physical violence**. Verbal abuse, emotional and psychological abuse, sexual abuse, destruction of shared property and financial abuse (for example, controlling the woman's expenses and bank account), are now considered means by which abusers seek to gain control over women, terrorize them and subjugate them.

See pp. 313-314:

With No Place to Turn: Improving Legal Advocacy for Battered Immigrant Women, Leslye E. Orloff, Deeana Jang, Catherine F. Klein, 29 Family Law Quarterly, 313, 1995-1996.

81. Battered women undergo a process referred to as the "**Victimization Phenomenon**". As part of the victimization phenomena which takes place within a relationship of humiliation and oppression, battered women lose their sense of self and their ability to define who they are. Women in this situation have trouble expressing their needs and wishes and find it difficult to face significant institutions and persons in their lives such as banks, schools, doctors, supervisors at the workplace etc.

82. The emotional world of women victims of violence is characterized by a number of central psycho-social phenomena. Women who are victims of violence experience social isolation, post traumatic symptoms, shame, self-blame, a sense of dehumanization, depression and repeat victimization.

83. Abusive relationships share a number of common dynamics. One of the central patterns is termed "**learned helplessness**". This refers to a woman's state after she repeatedly experiences unexpected

violence on the part of her male counterpart. As the violence is unpredictable and impossible to prevent, the woman's motivation to attempt to prevent it decreases with time and she stops responding to it. A woman in a state of learned helplessness has difficulty planning ahead and organizing her life. She no longer tries to initiate a change in her circumstances. This is one of the major reasons why battered women have difficulty leaving their abusive spouses.

84. The **Stockholm Syndrome** is also typical in prolonged abusive dynamics. This is a situation in which the spouses share a bond around the trauma caused by the violence, akin to the relationship between captor and captive. The spouses depend on each other for reinforcing their self image.

For research regarding the psycho-social phenomena associated with battered women, see:

Intimate Partner Violence and Women's Physical, Mental, and Social Functioning, Amy E. Bonomi, PhD, MPH, Robert S. Thompson, MD, Melissa Anderson, MS, Robert J. Reid, MD, PhD,David Carrell, PhD, Jane A. Dimer, MD, Frederick P. Rivara, MD, MPH, *Am J Prev Med* 2006;30(6);

Mental and Physical Health Effects of Intimate Partner Violence on Women and Children, Jacquelyn C. Campbell PhD, RN, FAAN, Linda A. Lewandowski PhD, RN, *Psychiatric Clinics of North America* - Volume 20, Issue 2 (June 1997);

Psychological Intimate Partner Violence: The Major Predictor of Posttraumatic Stress Disorder in Abused Women, Maria Angeles Pico-Alfonso, *Neuroscience and Biobehavioral Reviews 29 (2005)* 181–193.

The unique case of battered immigrant women

85. As emerges from the aforesaid, in addition to the immense psychological trauma caused by the abusive relationship, battered women also experience significant social and emotional hardships. **In cases where the battered woman is also an immigrant and the spouse is a citizen or local resident, there are additional and unique hardships and complications**.

86. Immigrant women, particularly women who immigrate to a foreign country by themselves, in order to live with their partners, are normally cut off from their families and circle of friends. That is, immigrant woman are inherently isolated from their peers and family. In a situation in which an immigrant woman is also abused, her isolation is all the greater. Families experiencing domestic violence are, in most cases, isolated and have few social connections. **An immigrant woman in an abusive relationship experiences dual isolation**.

87. **In addition to social isolation, research has shown that immigrant women are significantly less likely to seek help (official or unofficial) than battered women who are not immigrants**. The reasons for this are social, legal and circumstantial (lack of fluency in the local language, lack of familiarity with the relevant institutions and others). Additionally, immigrants generally refrain from turning to the courts due to apprehension about interacting with state institutions, particularly those overseeing issues of residency status.

88. As is known, foreign spouses of Israelis have no independent vested right to acquire status in Israel and the Israeli spouse must arrange for his or her foreign spouse's status. As stated, a central motivation for violence against women is the desire for control. **The fact that a woman's status depends on her male spouse's readiness to arrange for this status leaves her at his mercy and adds another dimension to the abusive relationship**. The abusive male uses the issue of status in order to control and terrorize the woman: he hides her passport, threatens not to go with her to the

Ministry of Interior to arrange for her status, destroys her immigration papers, threatens to break the relationship and inform the Ministry of Interior thereof, which would result in her deportation.

For a description of and details about the unique case of battered immigrant women see:

Violence Against Immigrant Women: The Roles of Culture, Context, and Legal Immigrant Status on Intimate Partner Violence Anita Raj, Jay Silverman, *Violence Against Women*, Vol. 8 No. 3, March 2002 367-398

89. The Israeli Supreme Court has also acknowledged the fact that in the case of foreign battered women, there are other obstacles preventing the woman from complaining:

> The Court below cited the remarks of Justice Procaccia made in CrimA 6758/07 **A. v. State of Israel** [published in Nevo] to the effect that" "… [W]ithin the family… violence is most often directed at the weak by the strong. There is a great inequality of power when it comes to violence against minors or against a female partner. In cases of domestic violence, victims' access to the police and other support mechanisms is a complex and difficult matter that involves strong emotions, fear and terror. The shame and the desire to keep the family intact often make complaining about domestic violence a difficult and charged move. The abused spouse is often financially and emotionally dependant on the abusor and this dependency also makes it difficult to expose the violence." **I shall add that in the case at hand, the spouse is not originally from the country, which intensifies the difficulty.**
>
> (CrimA 7844/09 **Hussein v. State of Israel**, published in Nevo, para. F, emphases added, N.D.)

90. Many of the phenomena described above can be observed in the Petitioner's case. Her husband attempted to control her in many different ways, beginning with physical violence against her and the children, continuing with breaking objects and raising his voice and ending with threats and intimidation. The husband made cruel use of the fact that the Petitioner had no status in the country in order to increase his control over her, terrorize her, make her dependant on him and keep her at his mercy. He turned the home into a prison. **In the ten years she lived in Israel, the Petitioner hardly left her home and neighborhood.**

91. **There is no doubt: what the Petitioner did on that fateful night in October 2010 required great courage: turning to the enforcement agencies despite the fear and anxiety typically experienced by a battered woman who undertakes such an act; refusing to submit to her husband's threats and intimidation. The courage it takes to take such a step is indicative of the severity of the Petitioner's predicament. On that night, she reached the point of no return.**

Special humanitarian grounds in the case of battered immigrant women

92. As detailed in the various documents submitted to the Respondent, the Respondent himself acknowledges the complex situation of battered immigrant women and has established Protocol 5.2.0017A, "Protocol for Cessation of the Graduate Procedure for Status for Spouses of Israelis as a Result of Violence by the Israeli Spouse", specifically for cases involving such women. The objective of the Protocol was to enable the foreign spouses to receive status in Israel independent of their husbands, so that they would not refrain from complaining for fear they would be deported once the graduated procedure is halted (AP (Jerusalem) **Shem Tov**, published in Nevo, §6).

93. The rationale for the Protocol is the intention to meet Israel's obligation, as a democracy, to do everything in its power to eradicate violence against women. The remarks of Justice Dorner in CrimA **Buhbut v. State of Israel** (IsrSC 49(3) 647, 655) are relevant:

> The abuse victim's despair is not the mother of all sins. Rather, it is society's silence, beginning with those who know of the abuse and fail to report it and ending with the authorities who do not intervene as required. Many studies have demonstrated that society's apathy and disregard toward domestic violence enable the escalation of violent dynamics which end in death – for the most part, the death of the woman at the hands of the husband and sometimes, the death of the abusive husband at the hands of the battered wife.

94. This rationale, relating to the public interest in eradicating violence, has recently been acknowledged as the rationale underlying the Protocol:

> I personally believe that considering the importance of the public interest in eradicating violence against women… and the fact that this is not a case of rare incidents of violence but rather a far reaching phenomenon in our society – indeed there was room to enshrine these considerations in protocol.
>
> (AAA 8611/08 **Zawaldi v. Minister of Interior**, published in Nevo, judgment dated February 27, 2011).

95. **The Petitioners will argue that fulfilling the public interest in eradicating violence must include recognition of the humanitarian needs of battered immigrant women – to be implemented at a practical level - with special attention to the issues that are unique to these victims.**

96. As stated, the purpose of the protocol which allows a battered immigrant wife to seek status in Israel independently is to sever the victim's destructive dependency on her abusive husband and allow her to arrange for her own status, independently. By including a provision to extend the woman's residency visa, the protocol encourages battered women to complain without fear of losing their status as a result.

97. **This rationale is particularly pertinent to cases in which the battered wife's status <u>was never formalized</u>**. These women are vulnerable to enforcement and deportation and are more afraid to contact the authorities about the violence. **It takes extraordinary courage for a battered wife who has no status in Israel to contact state authorities and complain about the abusive husband.** In refusing to grant the Petitioner temporary status, the Respondent is ignoring the courageous step the Petitioner has taken, a step that helped Israel's enforcement and criminal prosecution agencies to meet their objectives with respect to enforcing criminal law and prosecuting and punishing offenders.

98. As is well known, the Respondent enjoys broad discretion with respect to the issue of entry into Israel and the granting of residency visas (See HCJ 431/89 **Kendal v. Minister of Interior**, published in Nevo):

> … the Minister of Interior has broad discretion and the provisions contained in the statute also grant him discretion. Therefore, the Respondent's claim

> that the statutory provisions leave him no margin of discretion cannot be accepted.
>
> (AP (TA) 1228/06 **A. v. Ministry of Interior**, published in Nevo. Hereinafter: **A**).

99. However, within the framework of his broad discretion, the Respondent must consider humanitarian grounds:

> The "Criteria for Granting Permanent Residency Visas in Israel" issued by the Ministry of Interior are used by the Minister of Interior in making decisions on such matters [granting permanent residency visas, N.D.] (see, Appendix M). These criteria contain section D which reads:
>
> "Special cases for humanitarian grounds, or when the State of Israel has a special interest in granting a permanent residency visa".
>
> (AP (Haifa) 1060/05 **Feldman Larissa v. Minister of Interior**, published in Nevo. Hereinafter: **Feldman**)

100. Clearly, if the humanitarian criterion applies to applications for **permanent residency**, it should apply all the more so to applications for **temporary residency**.

101. The duty to take humanitarian considerations into account is grounded in Hebraic law:

> Complete disregard for humanitarian considerations as considerations relevant for establishing the policy on visas for entering and remaining in Israel contradicts the Jewish world view and the Jewish canons and has been attributed to biblical Sodom. Our sources say: "They [the men of Sodom] **said: Since gold and silver cometh from our land, why should we suffer wayfarers who come to us only to deplete our wealth? Let us eradicate travelers** [= foreigners] **from our land**" (Sanhedrin 109, 71)
>
> (**Fedlman**, above)

102. As described above, in the temporary status application and in the appeal, the Petitioner detailed significant humanitarian considerations which justify granting her a temporary residency visa that would allow her to recover, work and provide for her children, who are permanent residents of Israel, with dignity. The Petitioner also described Israel's interest in assisting and protecting women who share the Petitioner's predicament – victims of violence on the part of their Israeli spouses.

103. In **A**, cited above, which concerned a foreign caregiver, the Court held that the petitioner's work visa in Israel should be extended despite the fact that she did not meet the formal requirements of the Entry into Israel Law or the protocol on employers. The Court ruled that in special cases involving exceptional humanitarian considerations, and for the purpose of preventing injustice as well as wrongdoing and harm to an elderly person, the formal requirements of the law as well as the requirement of the protocol vis-à-vis deadlines can be overridden and the deadlines can be extended. These exceptions can be made using the powers naturally vested in the Court, the special exception for humanitarian cases and based on the consideration of protecting an individual's dignity and basic rights, as required by Basic Law: Human Dignity and Liberty. Such a decision

involves the application of the proportionality principle for the purpose of preventing harm to the elderly, where, in special cases, a favorable decision could save a life.

104. The ruling in the **A** case is relevant to the case at hand both by analogy and *a-fortiori*. As detailed above, the case at hand involves humanitarian considerations pertaining to both the Petitioner, who is requesting the visa, and her children, who are permanent residents of Israel. In the **A** case, the petitioner's visa was extended solely for reasons pertaining to the Israeli woman for whom she was caring. In this case, as stated, the humanitarian considerations pertain both to permanent residents of Israel (the Petitioner's children) and to the Petitioner herself.

105. As recalled, the Respondent's claim was laconic: the Petitioner does not meet the terms of the Protocol. However, the law requires the Respondent to depart from the provisions of the Protocol at times in order to consider various humanitarian grounds. Specifically, in AP 2743/09 **A v. Ministry of Interior** (unreported, judgment dated January 26, 2010), the Court referred to the duty of the Ministry of Interior to, at times, depart from the provisions contained in the Protocol in order to fulfill the rationales underlying the very same protocol:

> The Violence Protocol, as any other protocol serving as a guideline for the conduct of the Respondent and any local authority, constitutes internal directives the purpose of which, as their title indicates, is to guide the authority with respect to the decisions it makes and set a clear, equitable and reasonable framework for the decision making process. Notwithstanding the aforesaid, the protocols adopted by an authority are not meant to replace its discretion, **and in appropriate cases, the authority would have an obligation to depart from its guidelines, sometimes for the very purpose of fulfilling their intended purpose…** the "Violence Protocol", which is the subject of this petition, establishes the manner in which the Ministry of Interior must act once a foreign spouse complains of violence by her Israeli spouse, where the graduated procedure for citizenship has been halted. The very existence of a protocol indicates that the Respondent himself was of the opinion that violence by the Israeli spouse against the foreign spouse is, in certain cases, sufficient grounds *per se* not to stop the graduated procedure. The existence of violence may attest to a significant power inequality between the Israeli spouse and the foreign spouse and to a strong dependency on the violent spouse. In a relationship in which such power gaps exist, there is an inherent concern that the Israeli spouse would use the foreign spouse's dependency and hold her "hostage" to his ability to stop the graduated procedure have her rights violated. The Protocol is intended to protect the foreign spouse from the formidable power the violent spouse has and it sends a very clear social message on this issue. **The criteria listed in the Protocol are designed, as stated, to provide guidelines for the Respondent's discretion and their logic is clear… Yet, I am of the opinion that such literal insistence on the established deadlines ignores other particulars that have been indicated in the written submissions and misses the point of the Violence Protocol as detailed above.**
>
> (Ibid., §§ 25-27, emphases added, N.D.)

106. Thus, in view of the rationales underlying the Protocol, and the Respondent's obligation to depart from this Protocol in humanitarian cases; in view of the clear case law on this issue and,

particularly, in view of the difficult circumstances of the Petitioner and her children, it is clear that she should be granted temporary status while she waits for the decision of the Inter-Ministerial Committee in her matter.

The Petitioner's as a victim, at her husband's mercy

107. In her decision, Respondent 4 found that the Respondent's decision not to grant the Petitioner temporary status for the duration of the processing of her application by Inter-Ministerial Committee was a reasonable decision considering the fact that, "None of the tests the Respondent must apply in the context of the graduated procedure were applied or proven with respect to the Appellant." Her decision concluded with the finding that "considering the fact that the Appellant entered the country in 2000 with a tourist visa and has been **illegally present in the country ever since**, I have found that the Respondent's undertaking not to remove her pending the decision of the Inter-Ministerial Committee is a reasonable decision and there is no room for intervention therein" (emphasis added, N.D.).

108. We shall argue below that this reason, provided by Respondent 4, only intensifies the Petitioner's victimization by forcing her to pay the price for ommissions of which she is entirely innocent and over which she had no power or control.

109. As described above in detail, one of the phenomena characterizing an abusive relationship is the abuser's need for control over his victim. In the case of immigrant women, their status is used as yet another means for gaining control over them and hurting them. This was the Petitioner's case. Her husband refused to contact to the Ministry of Interior to have her status arranged and in so doing, effectively imprisoned her in their home using her fear of enforcement and deportation.

110. **Thus, the Petitioner cannot be held liable for remaining in the country unlawfully in any way.** The Petitioner was unable to contact the Respondent independently to ask to have her status arranged under the family unification procedure, as she required her husband, "the sponsor", in such a procedure. Yet, her husband, as stated, refused to act as a sponsor and preferred to use the fact that the Petitioner had no status as a tool for terrorizing and controlling her.

111. Denying the Petitioner's application because her status in Israel had never been arranged goes beyond punishing an innocent woman. It legitimizes the husband's behavior. **The Respondent must not be complicit in the violence by asking the woman to meet conditions over which she had no power and control and which were rather, yet another manifestation of her husband's violence against her.**

A battered woman's freedom of choice

112. Respondent 4 views the non-arrangement of the Petitioner's status in Israel as something over which she had control and free choice. This approach must be flatly rejected.

113. The argument that it is not reasonable to treat a victim of abuse as having had control over the arrangement of her status is supported by the extensive judgment issued by Honorable Justice Dr. Agmon-Gonen in AP 2321/08 **A v. State of Israel** (published in Nevo). This judgment concerned the Respondent's refusal to grant the petitioner therein a tourist visa for Israel because she had previously entered the country under an assumed identity in order to engage in prostitution (hereinafter: the **human trafficking victims case**). In that judgment, the Court held that **victims of trafficking must not be considered as having chosen their fate**. The Court further held that:

> **In the framework of this petition, it is not possible to "punish" the victim and deny her and her husband's rights simply because she had been a victim of one of the worst offenses imaginable.**

114. The judgment concludes with the following:

> When the Petitioners asked to enter the graduated procedure for status, the Respondent refused because the Petitioner had entered the country under an assumed identity and engaged in prostitution knowing that this was the reason for her arrival in the country. **In effect, the Ministry of Interior is "punishing" the Petitioner for marrying a girl who had suffered the cruel fate of being forced into becoming a prostitute in Israel by a gang that trafficked in women.**
>
> As soon as the Petitioner was apprehended in the escort establishment, she told the police that she had arrived in the country under an assumed identity, **cooperated with the investigation and even received temporary status in order to be able to testify against the men who had brought her to the country**. Why is it that the Petitioner, an Israeli citizen, cannot marry the Petitioner and live in the country, or arrive for visits with her? The Petitioner now uses her own identity and the claim that she had previously entered the country under an assumed identity provides no grounds, let alone reasonable grounds, for denying her a multiple entry visa.
>
> … [I]t seems, as I have stated in detail in the chapter on trafficking in women, that **society tries to avoid dealing with this phenomenon, to turn away from it. In the response submitted by the Respondent, the Petitioner was effectively told that if he chose a victim of human trafficking, it was his choice, but he should not force us, as a society, to grapple with it, to accept her as equal.**

115. The judgment in AP 1164/07 **Masart Ngahs (Ashgry) v. Minister of Interior** (delivered on May 9, 2010), relies on a rationale similar to that underlying the **human trafficking victims** judgment. The petition was filed in the matter of a Christian woman, born in Ethiopia, who had immigrated to Israel as a member of a family that was entitled to do so [under the Law of Return]. Following abuse by one of the Petitioner's family members, she fled the home and was placed in a boarding school. While at the boarding school, she told the staff social worker that her biological mother had paid the mother of the family who had immigrated to Israel to register her as her daughter and take her to Israel with them. The mother lied and registered the Petitioner's age as one that matches the ages of the family's children. Following this disclosure, the Petitioner expressed remorse and sought to remain in the country and obtain status for humanitarian reasons. **In that case, the Court ruled that the fact that the Petitioner was well aware of the fact that she had entered the country fraudulently does not indicate that she had the freedom to choose whether or not to cooperate with the fraud.** It was also ruled that since this was a common practice, it must be resolved by way of establishing a specific protocol and that until this was done, the petitioner must not be deported. In the judgment, the Court made an analogy between the case in the petition and the issue of battered immigrant women:

> The fraud was discovered after the Petitioner fled the home of the Tambuallal family, with whom she had immigrated. She fled the home, as indicated by the submissions before me, due to violence and abuse she

> suffered at the hands of one of the family members. After she fled, the circumstances of her immigration to Israel were uncovered. This case is similar to cases of violence against foreign spouses by Israeli spouses. In the latter cases, once the authorities learned that abused foreign spouses were not complaining about the violence they were suffering at the hands of their Israeli spouse and were not leaving them because they were afraid that the process of acquiring permanent status in Israel would be halted and they would be deported, the problem was resolved by establishing a special protocol for such cases (see AP 8634/08 (Jerusalem) **Larisa Shem Tov v. Minister of Interior**). Indeed, the point of departure of the case at hand is different from that of battered foreign spouses, as the latter entered Israel lawfully. However, **as with battered foreign spouses, those entering depend on their Israeli "family members" and do not dare complain of the violence or sever the connection with the "family" for fear of losing their status and being deported from Israel. The "family members" take advantage of this situation and continue to abuse their foreign "family members"**.
>
> (Ibid., emphasis added, N.D.)

116. These remarks are relevant to the matter at hand *a-fortiori*. The Petitioner **entered the country lawfully**, with a tourist visa, sponsored by her husband. The fact that her continued presence in the country, after her tourist visa expired, was never arranged is the sole responsibility of her husband. **The Petitioner did not enter the country for the purpose of remaining it in unlawfully**. She presumed that the man she married would take care of her and contact the authorities to have her status arranged. These presumptions were proven false and the Petitioner's life turned into a violent ordeal. The Petitioner in this case, like the petitioner in the **trafficking victims** case, cooperated with the authorities. She filed a complaint with the police, which lead to the conviction of an offender in Israel.

117. **Thus, the argument presented by Respondent 4 for her decision to deny the Petitioner temporary status, namely that the Petitioner had not remained in the country under the graduated procedure and that her presence in the country was unlawful – cannot stand.**

118. It should be noted, that this reason, given by Respondent 4, is perplexing, given the decision she made in a very similar matter on **the same day**. The case in question involved a Jordanian woman who had also been abused by her Israeli husband and had applied to the Inter-Ministerial Committee to have her status in Israel arranged under the Victims of Violence Protocol. This woman had been in Israel since 1994. During some of this time, she had lawful status as part of the graduated procedure. However, her visa had not been renewed since 2002 as a result of her husband's violence against her and his neglect of the family unification application. She too filed an appeal against the Respondent's failure to respond to her application for temporary status for the duration of the Inter-Ministerial Committee's processing of her application (Appeal 550/11).

119. In contrast to her decision in the matter of the Petitioner herein, Respondent 4 decided to grant the aforesaid Appellant temporary status in Israel. In the decision, Respondent 4 determined that the facts of the appeal clearly indicated that "The Appellant had maintained a center-of-life in Israel since her lawful arrival in the country". Respondent 4 based her decision to grant the Petitioner temporary status on the fact that "Her abusive husband is entirely to blame for the years in which she remained in the country without a visa – namely, **the cause for her application to the Inter-Ministerial Committee is the reason why she currently has no status**", (emphasis added, N.D.)

The decision of Respondent 4 in Appeal 550/11 is attached hereto and marked **P/38**.

However, as specified and proven in the application made to the Inter-Ministerial Committee and in the appeal, **the Petitioner herein also remained in the country without a visa because of her abusive husband, through no fault of her own. Her cause for applying to the Inter-Ministerial Committee is also the reason why she has no status – her husband's severe violence toward her**. There is **no** substantive **difference** between the two cases.

For substantiation of the claim that the Petitioner remained in the country unlawfully because of her abusive husband, see §2 of her affidavit which was attached to the humanitarian application and the report prepared by social worker, Saja 'Abd al-Rahman, which was attached to the humanitarian application and marked B ("_____ coped with the abuse and the spousal betrayal silently. She claims the reason for this was the threats her husband made that he would take away her children because she did not have legal status in Israel").

As described in the beginning of the section on the law, the Respondent has recognized that at least at face value, the Petitioner's application does raise humanitarian grounds. It is no coincidence that the Petitioner was summoned for a hearing in the Respondent's office. The Petitioner repeated the explanation for her presence in the country without a visa at the hearing. The Petitioner also answered questions regarding her center-of-life and explained that she had not left the country since her marriage.

Thus, the Petitioner provided a sufficient explanation for the fact that she had remained in the country for many years without a visa. Additionally, during the hearing, the issue of her center-of-life in recent years was examined and it was clearly in Jerusalem (in fact, it was within the neighborhood of Sur Bahir, as the Petitioner's husband did not allow her to leave the house freely). The reason provided by Respondent 4 for her decision, whereby the Petitioner's center-of-life during the years she lived in the country had not been proven, borders on cruelty, considering her center-of-life was confined to the four walls of her home which had become her prison, the very place where she should have felt safe and protected.

Reasoning based on a problematic reading of judgments

120. In her decision, Respondent 4 cites two judgments on applications that were submitted to the Inter-Ministerial Committee. We hereinafter argue that these judgments cannot lead to the conclusions drawn by Respondent 4.

121. In her decision, Respondent 4 cites the judgment in AP (Center) 6535-04-10 **Ben Shoshan v. Ministry of Interior** (hereinafter: **Ben Shoshan**), commenting "see the remarks on granting a temporary residency visa to individuals who had already had such a visa." The Petitioners will argue that this is a selective and leading reference to the judgment.

122. Firstly, the fact that in **Ben Shoshan** a temporary visa was granted to a person who had such a visa in the past does not indicate that it is not possible to grant a temporary visa to an individual who **did not** have it in the past.

123. Secondly, the remarks of the court in **Ben Shoshan** actually lead to the conclusion that **the Petitioner herein should be granted a temporary visa**. This is inferred from the remarks the court made with respect to petitioner 2 in **Ben Shoshan**, who was granted a B/1 visa pending the Inter-Ministerial Committee's decision in her matter:

> **She is no longer a minor girl**, but a young woman, who is about to finish her university studies and has been living in the country since a young age.

> **She should be allowed to provide for herself in dignity pending the completion of proceedings in her matter. This is not a person who entered the country unlawfully. She entered entirely lawfully** as the minor daughter of Petitioner 1, who was married to an Israeli citizens and taking part in the graduated procedure. **As such, this does not constitute "rewarding" a person who broke the laws of the country and entered it unlawfully, but rather it befits her basic rights to human dignity.**
>
> (Ibid., emphases added, N.D.).

124. This is all the more relevant to the case of the Petitioner herein, who is **a mother of young children and must provide for them as well as for herself, a victim of violence who entered the country lawfully and remained in it unlawfully through no fault of her own and without having any control over this fact.** Is the Petitioner not entitled to a status that "befits her basic rights to human dignity"?

125. With respect to the judgment in AP 23165-05-10 **Karlibah v. Ministry of Interior,** which Respondent 4 cites as a matter in which "The petitioners were given no visa pending the decision of the Inter-Ministerial Committee"; the petition in that case did not focus on the issue of temporary status, but rather on the rejection of the petitioner's humanitarian application. It should be further noted that when the judgment was issued (November 7, 2010), the Inter-Ministerial Committee protocol did not contain the section that now appears in the Protocol and instructs to extend the visa of a person who applies to the Committee. This is quite possibly the reason why in that petition, the petitioners did not seek temporary status for the duration of proceedings before the Committee, and therefore, no finding was made on this issue.

The general remedy sought in the petition at bar

126. "Protocol for Cessation of the Graduate Procedure for Status for Spouses of Israelis as a Result of Violence by the Israeli Spouse" (Protocol 5.2.0017A), (hereinafter: the **Protocol**) was put in place following a number of cases in which the graduated procedure of foreign spouses was stopped after their marriage was severed as a result of the Israeli spouse's violence against the foreign spouse. The purpose of the Protocol was to allow these foreign women to obtain status in Israel independently of their husbands so that they do not refrain from complaining about the abusive spouses out of fear of being deported once the graduated procedure is stopped (AP (Jerusalem) **Shem Tov**, published in Nevo, §6). It was further established that the Protocol regulates the legal requirements in the matter of battered women and therefore, the status they are granted pursuant to the Protocol is granted as a matter of law rather than *ex gratia* (ibid., §9).

127. However, it appears that the Protocol fails to address another manifestation of men's violence and abuse against their wives: their refusal to contact the Respondent with a request to arrange the immigrant wife's status. The Petitioner's story illustrates how significant this element of violence against immigrant women is and how urgently a protocol for resolving such cases is required. The petition at bar focuses on the need to arrange for these women's status temporarily pending the decision of the Inter-Ministerial Committee in their matter.

128. The requirement put forward by the Respondent whereby the woman should have taken part in the graduated procedure and obtained, through it, a visa that would then be extended pending completion of processing by the Inter-Ministerial Committee gives abusive violent men more power. It makes the man, rather than the woman, the right bearer while negating the woman's basic human rights. Yet, the Supreme Court has ruled that when the Ministry of Interior uses its broad discretion on the issue of entry into Israel and status therein, it must keep in mind that immigrants

are themselves individuals and that it may not treat immigrants as the subjects of other people's rights:

> This approach (which makes immigrants the subject of other people's rights, N.D.), as stated above, does not stand up to constitutional scrutiny, since it does not satisfy the principle of proportionality. It also does not stand up to moral scrutiny, since human beings always are and end and a value in themselves.
>
> (HCJ 4542/02 **Kav LaOved v. Government of Israel** (314 IsrLR [2006] (1) IsrLR 260, judgment dated March 30, 2006, §60 of the opinion of Justice Levy (hereinafter: **Kav LaOved**)).

129. In Kav LaOved, the Court addressed the "restrictive arrangement" whereby by a migrant worker must remain with their Israeli employer, or "sponsor". The restrictive arrangement created a dependency on the Israeli sponsor, such that leaving the sponsor resulted in losing one's legal status in Israel. In its judgment, the Supreme Court found that the "restrictive arrangement" was unlawful. Employers, it was found, had taken advantage of the employees' dependence on them to violate their rights:

> We do not deny that the persons in authority were required to consider important conflicting factors — considerations of proper administration and of the need to prevent abuse of the permit to reside in Israel — but how did they fail to see that the arrangement that they made seriously violated the dignity of the foreign workers as human beings? Every human being — even if he is a foreigner in our midst — is entitled to his dignity as a human being.
>
> … We are overcome with shame when we see all this, and we cannot remain silent. How have we forgotten the law of the stranger that has been enshrined in the humanism of Judaism throughout the generations: 'And you shall not oppress a stranger, nor shall you pressurize him, for you were strangers in the land of Egypt' (Exodus 22, 20 (32)). Rabbi Shelomo Yitzhaki (Rashi) comments on this: 'Every use of the word "stranger" means a person who was not born in that country but came from another country to live there' (Rabbi Shelomo Yitzhaki (Rashi) on Exodus 22, 20 [33]). Was Rashi speaking of our case? As E.S. Artom says in his commentary: '"And… a stranger" — a gentile who lives among the Jewish people and who has no friends or relative who can come to his aid at a time of need.' Could these remarks refer to foreign workers? The Torah has also told us: 'And you shall not pressurize a stranger, for you know the feelings of the stranger, because you were strangers in the land of Egypt (Exodus 23, 9 (31)). The Torah tells us 'for you know the feelings of the stranger.' Rashi comments: 'The feelings of the stranger — how difficult it is for him when people pressurize him' (Rabbi Shelomo Yitzhaki (Rashi) on Exodus 23, 9 (34)). Do we really know how the stranger feels? I doubt it.
>
> (Ibid., §4 of the opinion of Justice Cheshin).

130. Indeed, the Respondent has taken an important step in establishing a protocol for handling the matters of women whose graduated procedure came to a stop as a result of their husbands' violence.

Now, the Respondent must address another aspect of this problem – women who never entered the graduated procedure. **These women are even more vulnerable than women whose status has been arranged previously** as, in addition to fearing the effects of severing the tie to the abusive husband, they also live in fear of enforcement agencies due to their presence in the country without a valid visa.

131. Thus, the Protocol must contain a provision whereby foreign women who seek status in Israel due to their being a victim of abuse by their Israeli husbands would be granted temporary status in Israel for the duration of the processing of their application by the Inter-Ministerial Committee and that they would be granted status even if they did not have an Israeli visa prior to filing their application.

132. In order to prevent a situation where ineligible applications are submitted to the Inter-Ministerial Committee, namely, applications in cases that do not meet the conditions set out in the Protocol, the Petitioners ask that temporary status be granted only to women whose cases had been referred to the Inter-Ministerial Committee, that is, women whose applications were found to show cause and were not rejected out of hand by the relevant desk. The Petitioners maintain that entering this exclusion into the Protocol reflects a proper balance between protecting women who are victims of abuse and the Respondent's broad discretion in granting foreigners entry and residency visas.

Conclusion

133. The State must not perpetuate the victimization of a woman who suffered such cruel abuse at the hands of a husband whose desire to control her was so strong that he turned her into an "illegal alien" despite herself and made the home her prison rather than her castle.

134. Cases of women who suffer domestic violence are clearly humanitarian cases and must be treated with appropriate respect and sensitivity. The State must provide comprehensive protection for these women, and the Respondent, in particular, has an obligation to assist them in all matters relating to visa and status.

135. In light of all the above, the Petitioners argue that the conclusions of the Commissioner and the position of the Respondent must not be accepted. The Honorable Court is moved to accept the petition and instruct the Respondent to approve the Petitioner's application for temporary status for the duration of her application's processing by the Inter-Ministerial Committee. The Court is also moved to instruct the Respondents to pay for the Petitioner's trial costs and legal fees.

Jerusalem, February 7, 2012

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(File No. 67755)